

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LaPATRICK A. JOHNSON, G62253,)
Petitioner,) No. C 12-5897 CRB (PR)
vs.) ORDER TO SHOW CAUSE
RON BARNES, Acting Warden,) (Docket # 4)
Respondent.)

Petitioner, a prisoner incarcerated at High Desert State Prison (HDSP), has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction from Alameda County Superior Court. He also seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

BACKGROUND

Petitioner was convicted by a jury of two counts of committing a lewd act on a child. The court also found that petitioner had suffered seven prior convictions and had served six prior prison terms. On June 2, 2009, he was sentenced to 55 years to life in state prison.

Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California. He also unsuccessfully sought collateral relief from the state courts. On October 10, 2012, the Supreme Court of California denied his final state petition for a writ of habeas corpus.

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id. § 2243.

B. Claims

Petitioner seeks federal habeas corpus relief by raising several claims, including ineffective assistance of counsel, suppression of material evidence, prosecutorial misconduct, evidentiary and instructional error, and insufficiency of the evidence. Liberally construed, the claims appear minimally cognizable under § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. Petitioner's request to proceed in forma pauperis (docket # 4) is GRANTED.

2. The clerk shall serve a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

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1 3. Respondent shall file with the court and serve on petitioner, within
2 60 days of the issuance of this order, an answer conforming in all respects to Rule
3 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
4 habeas corpus should not be granted. Respondent shall file with the answer and
5 serve on petitioner a copy of all portions of the state trial record that have been
6 transcribed previously and that are relevant to a determination of the issues
7 presented by the petition.

8 If petitioner wishes to respond to the answer, he shall do so by filing a
9 traverse with the court and serving it on respondent within 30 days of his receipt
10 of the answer.

11 4. Respondent may file a motion to dismiss on procedural grounds in
12 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
13 Rules Governing Section 2254 Cases. If respondent files such a motion,
14 petitioner must serve and file an opposition or statement of non-opposition not
15 more than 28 days after the motion is served and filed, and respondent must serve
16 and file a reply to an opposition not more than 14 days after the opposition is
17 served and filed.

18 5. Petitioner is reminded that all communications with the court must
19 be served on respondent by mailing a true copy of the document to respondent's
20 counsel. Petitioner must also keep the court and all parties informed of any
21 change of address.

22 SO ORDERED.

23 DATED: March 7, 2013


24 CHARLES R. BREYER
25 United States District Judge